

**§ 5.32 Expedited procedures for certain reorganizations.**

(a) *Authority.* 12 U.S.C. 93a and 215a-2.

(b) *Scope.* This section prescribes the procedures for OCC review and approval of a national bank's reorganization to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company. For purposes of this section, a "bank holding company" means any company that owns or controls a national bank, or will own or control one as a result of the reorganization.

(c) *Licensing requirements.* A national bank shall submit an application to, and obtain approval from, the OCC prior to participating in a reorganization described in paragraph (b) of this section.

(d) *Procedures*—(1) *General.* An application filed in accordance with this section shall be deemed approved on the 30th day after the OCC receives the application, unless the OCC notifies the bank otherwise. Approval is subject to the condition that the bank provide the OCC with 60 days' prior notice of any significant deviation from the bank's business plan or any significant deviation from the proposed changes to the bank's business plan described in the bank's plan of reorganization.

(2) *Reorganization plan.* The application must include a reorganization plan that:

(i) Specifies the manner in which the reorganization shall be carried out;

(ii) Is approved by a majority of the entire board of directors of the national bank;

(iii) Specifies:

(A) The amount and type of consideration that the bank holding company will provide to the shareholders of the reorganizing bank for their shares of stock of the bank;

(B) The date as of which the rights of each shareholder to participate in that exchange will be determined; and

(C) The manner in which the exchange will be carried out;

(iv) Is submitted to the shareholders of the reorganizing bank at a meeting to be held at the call of the directors in accordance with the procedures prescribed in connection with a merger of a national bank under section 3 of the

National Bank Consolidation and Merger Act, 12 U.S.C. 215a(a)(2); and

(v) Describes any changes to the bank's business plan resulting from the reorganization.

(3) *Financial and managerial resources and future prospects.* In reviewing an application under this section, the OCC will consider the impact of the proposed affiliation on the financial and managerial resources and future prospects of the national bank.

(e) *Rights of dissenting shareholders.* Any shareholder of a bank who has voted against an approved reorganization at the meeting referred to in paragraph (d)(2)(iv) of this section, or who has given notice of dissent in writing to the presiding officer at or prior to that meeting, is entitled to receive the value of his or her shares by providing a written request to the bank within 30 days after the consummation of the reorganization, as provided by section 3 of the National Bank Consolidation and Merger Act, 12 U.S.C. 215a(b) and (c), for the merger of a national bank.

(f) *Approval under the Bank Holding Company Act.* This section does not affect the applicability of the Bank Holding Company Act of 1956. Applicants shall indicate in their application the status of any application required to be filed with the Board of Governors of the Federal Reserve System.

(g) *Expiration of approval.* Approval expires if a national bank has not completed the reorganization within one year of the date of approval.

(h) *Adequacy of disclosure.* (1) An applicant shall inform shareholders of all material aspects of a reorganization and comply with applicable requirements of the Federal securities laws, including the OCC's securities regulations at 12 CFR part 11.

(2) Any applicant not subject to the registration provisions of the Securities Exchange Act of 1934 shall submit the proxy materials or information statements it uses in connection with the reorganization to the appropriate district office no later than when the materials are sent to the shareholders.

[68 FR 70129, Dec. 17, 2003]

**§ 5.33 Business combinations.**

(a) *Authority.* 12 U.S.C. 24(Seventh), 93a, 181, 214a, 214b, 215, 215a, 215a-1,